HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.NO. 14305 OF 1997

DATED: 19.6.2007

Between:

M/s Balaji Jewellery, represented by its
Partners

… Petitioners

and

The Municipal Corporation of Hyderabad,
Represented by its Commissioner, and others

… Respondents

HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.NO. 14305 OF 1997

ORAL ORDER:

The petitioners approached this court and filed the present writ petition with the following prayer:

> ***"For the reasons stated in the accompanying affidavit, the petitioners herein pray that this Hon'ble Court may be pleased to issue a writ or order or direction, more particularly one in the nature of writ of Mandamus, declaring the said proceedings of the 1st respondent in Permit No.67/6690 dated 20.6.1997 in File No.474/TP/R8/HO/97 issued in favour of the respondents 2 to 4 as arbitrary, illegal and contrary to the provisions of G.O.Ms.No.243 M.A., dated 22.5.1997 and pass such other orders."***

Brief facts of the case are that the petitioners are running a jewellery shop in the name and style of "M/s Balaji Jewellery" in the premises bearing No.5-8-554 and 555 at Abid Road, Hyderabad. It is their case that respondents 2 to 4 are the owners of abutting their premises, bearing No.5-8-553. Earlier, the respondents used to run a bar in the said premises and subsequently the same was closed. While so, it is contended that the respondents without obtaining any permission raised pillars in the said property. Though the petitioners

made several representations, no action was taken. The petitioners filed civil suit and also obtained interim order of status-quo. Without adhering to the orders of the civil court, the respondents raised the RCC slab on 14.4.1997. When the petitioners brought the same to the notice of the authorities concerned on 15.4.1997, the authorities issued a notice on 17.4.1997 to the respondents 2 to 4 to demolish the unauthorized construction. Thereafter, the unofficial respondents preferred W.P.No.7990 of 1997 before this court and this court disposed of the said writ petition at the stage of admission directing the authorities to consider the representation of the respondents (representation filed for regularization before the authorities) 2 to 4 for regularization in accordance with G.O.Ms.No.243 MA and UD dated 22.5.1996.

It is the case of the petitioners that as per the said G.O., the unauthorized constructions made up to 30.3.1996 are only to be regularized, whereas the unofficial respondents made constructions after 30.3.1996. However, it is the case of the petitioners that the authorities have regularized the constructions of the respondents 2 to 4 through Permit No.67/6690, which is challenged by way of this writ petition.

It is mainly contended by Sri M.V. Durga Prasad, learned counsel for the petitioners, that in terms of G.O.Ms.No.243 dated 22.5.1996, it is only for those constructions made in between 30.3.1996 to 30.6.1996, the regularization was taken place, but not to those buildings completed by the respondents long after the period

mentioned in G.O.Ms.No.243. However the authorities, particularly the 1st respondent, had given Permit No.67/6690 on 20.6.1997 permitting regularization of the said unauthorized constructions.

It is further contended by the learned counsel for the petitioners that despite the fact that the petitioners have brought these facts to the notice of the Special Officer and Commissioner, MCH, without affording any opportunity to the petitioners herein, the abovementioned permit was given. In spite of the fact that the Standing Counsel for the Corporation was directed to produce the record to know as to whether the petitioners are put on notice before such a permit was granted, the Corporation failed to produce the same.

Sri G. Pedda Babu, learned counsel appearing on behalf of the respondents 2 to 4, submitted that the said construction, though unauthorized, was completed before 30.6.1996 and as per the terms of the G.O.Ms.No.243 dated 22.5.1996, they gave an application requesting the authorities to regularize the said construction and it is only after being satisfied that the said construction was made before the cut off date i.e. 30.6.1996, the authorities granted the said permit regularizing the said unauthorised construction.

Having heard the learned counsel on either side, this court of the view that whether the said construction is prior to 30.6.1996 or subsequent thereto, loses any significance. Several Government Orders were issued formulating the schemes for regularizing the unauthorized constructions throughout the State. In this context,

G.O.Ms.No.87 MA & UD Department dated 12.2.1992, G.O.Rt.No.1235 dated 14.8.1992, G.O.Rt.No.712 dated 17.6.1995 have come into existence prior to G.O.Ms.No.243 dated 22.5.1996.

Now this G.O.Ms.No.243 dated 22.5.1996 relates to the period from 30.3.1996 to 30.6.1996. Thereafter, the Government issued some more G.Os i.e. G.O.Ms.No.382 dated 27.7.1996, G.O.Ms.No.343 dated 2.12.1997, G.O.Ms.No.373 dated 1.7.1998 and G.O.Ms.No.419 dated 30.7.1998. In the last G.O. referred to above i.e. G.O.Ms.No.419 dated 30.7.1998, the Government superseded all the earlier Government Orders and formulated a comprehensive building regularization scheme regularizing the unauthorized constructions made from 1.1.1985 to 30.6.1998. However, the said G.O. was quashed by this court on 25.1.2002 in W.P.No.25011 of 1998.

In the light of the said orders passed by this court, to validate the comprehensive building regularization scheme provided for in G.O.Ms.No.419, the Government brought an enactment i.e. Andhra Pradesh Regularisation of the Unauthorised Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003 (for short 'the Act 6 of 2003') and the same was published in A.P. Gazette on 15.4.2003.

In the preamble itself, it is clearly stated that this is an Act to provide for the regularization of the unauthorized constructions made in the areas of Municipal Corporations, Municipalities and Urban Development Authorities and the matters connected therewith and incidental thereto.

For a minute, even if the said contention of Sri M.V. Durga Prasad, learned counsel for the petitioner, is accepted that the said completion of the unauthorized construction by the unofficial respondents is beyond 30.6.1996, in my considered view, the said construction is squarely covered under the comprehensive building regularization scheme introduced in the said Act 6 of 2003. Of course, it is the contention of the learned counsel for the petitioners that he was not heard before such a permit was granted. I don't think he could, in any way, improve his case by getting an opportunity to appear and explain as to how the respondents are not entitled for regularization. As stated above, the Government of Andhra Pradesh thought it fit to regularize all those unauthorized constructions made in between 1.1.1985 to 30.6.1998 and thus introduced a comprehensive building regularization scheme. The only thing that he could canvass before the authorities is that the said completion of the construction by the respondents 2 to 4 was beyond 30.6.1996 and more than that, he could say nothing. Even if the said completion of the construction of the said unauthorized building was even beyond 30.6.1996, still it is covered under the comprehensive building regularization scheme, introduced by Act 6 of 2003.

For the foregoing reasons, I do not find any merits and the writ petition is accordingly dismissed. No costs.

GOPALA KRISHNA TAMADA, J

Date: 19.6.2007
cvm